

DOCUMENT # 4883

4/9/87
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MANAGEMENT AGREEMENT

by and between

BOSTON REDEVELOPMENT AUTHORITY

and

FITZ-INN AUTO PARKS, INC.

MANAGEMENT AGREEMENT

BY AND BETWEEN

BOSTON REDEVELOPMENT AUTHORITY

AND

FITZ-INN AUTO PARKS, INC.

THIS MANAGEMENT AGREEMENT (the "Agreement") is made as of the 16th day of April, 1987, by and between the BOSTON REDEVELOPMENT AUTHORITY, a public body, politic and corporate existing pursuant to Chapter 121B, as amended, of the Massachusetts General Laws, (hereinafter referred to as the "Authority") and the "Owner"), and FITZ-INN AUTO PARKS, INC., a corporation duly organized and existing under Chapter 156B, as amended, of the Massachusetts General Laws, (hereinafter referred to as the "Manager").

WITNESSETH

WHEREAS, the Authority is the Owner of the Premises located at Sargent's Wharf, Boston, Massachusetts, as generally described in the Map attached hereto as Exhibit "A" and incorporated herein by reference;

WHEREAS, included in said Premises are areas devoted to parking and which contained two hundred thirty (230) parking spaces (hereinafter referred to as the "Parking Facility"), as identified on a plan, entitled "Waterfront Project, Parcel B-3, Sargent's Wharf, Parking Layout", (the Parking Layout Plan) prepared by the Authority and dated February 13, 1987, a copy of which has been provided to the Manager, the receipt of which is hereby acknowledged.

WHEREAS, the Authority desires to have said Parking Facility operated by a party with experience in the operation of public parking lots; and

WHEREAS, the Manager has had experience in the operation of such public parking lots.

NOW THEREFORE, and in consideration of the mutual covenants and agreements herein contained, the Authority and Manager hereby covenant and agree as follows:

1. Exclusive License

The Authority hereby grants to Manager the exclusive right to operate the Parking Facility for a term, upon the payment of the management fee and reasonable costs and upon all the other terms, conditions, covenants and agreements herein contained.

2. Terms

The term of this Agreement shall be for a period of one (1) year from the date hereof and continuing in full force and effect thereafter from year to year; provided, however, that either party may, at any time, upon sixty (60) days written notice to the other, cancel and terminate this Agreement during said term without cause. Notwithstanding the foregoing, the Authority may terminate this Agreement immediately, (i) for material breach hereof by Manager; (ii) in the event of the filing by Manager of a petition or any application for relief, extension, moratorium or reorganization under

bankruptcy, insolvency, or debtor's relief law, or the appointment of a receiver, assignment for the benefit of creditors, or other similar financial difficulties; and (iii) in the event of a public taking of the Premises or any part thereof. In the event of any such taking, the entire award therefore shall be the sole property of the Authority and Manager shall have no claim or right to any part thereof.

3. Parking Facility Operation

Manager agrees to manage and operate the Parking Facility as a public lot on an operating schedule established by the Authority. This schedule, attached as Exhibit "B", shall define the hours of operation, which hours may be subject to change as circumstances require by notice from Authority to the Manager. The maximum and minimum public parking fees that may be charged shall be established by notice from the Authority and the same may be changed from time to time in its discretion. Preferential rights to use the Parking Facility will be given to such persons and firms that the Authority may, from time to time, request and direct by notice. The Authority by notice shall define the limits of the use and number of the parking spaces by in the Parking Facility. The initial number of such spaces shall be as set forth in the Parking Layout Plan. Free parking is prohibited. No employee of the Manager shall be authorized to take any vehicle outside of the Parking Facility. Said operation is to be performed in an efficient and satisfactory manner, in accordance with the provisions of this Agreement and in conformity with all laws, statutes and ordinances applicable to the management and operation thereof. The Manager shall maintain all operating equipment directly

related to the operation of the Parking Facility. Manager shall install or paint and maintain such signs, direction indicators, parking lines and so forth as the Authority shall approve and shall not elect to provide itself.

The Manager shall endeavor to provide dusk until dawn lighting of the Parking Facility, at expense of the Authority, which is consistent with lighting service provided at most City of Boston parking facilities. This service is to be provided to improve overall security of the Parking Facility, but in no way is deemed to be an affirmative obligation of the Authority, or the Manager nor is any liability assumed by provision of such lighting, or lack thereof.

4. Management Fee

The Authority agrees to pay to Manager an annual management fee equal to Thirty Thousand (\$30,000.00) Dollars payable in monthly installments of Two Thousand (\$2,500.00) Dollars per month, commencing one (1) month from the date hereof..

If a tax is levied by any governmental authority or body on the Parking Facility as either a tax on the rental of parking spaces or a tax on income not reflected as real estate taxes, the Manager will not collect any management fee on the amount of this tax.

5. Cash Receipts; Expenses; Accounting; Etc.

(a) Cash Receipts

Manager shall deposit cash receipts from the Parking Facility daily into such account(s) and in the name of the Authority at such bank(s), as the Authority may, from time to time, designate in writing.

(b) Expenses

The Authority agrees to reimburse Manager for all expenses reasonably and actually incurred by it in the operation of the Parking Facility, including but not limited to, wages for services of Operator's employees for work in the Parking Facility, (including payroll taxes, withholding taxes and costs of employee benefits attributable to such services), cleaning, maintenance, telephone, electricity, insurance premiums for the insurance required by this Agreement and the cost of materials, supplies and equipment used in the Parking Facility in the performance of this Agreement. No equipment costing in excess of Five Hundred (\$500.00) Dollars shall be purchased by Manager without the prior approval of the Authority and Manager may, in lieu of paying for such equipment, forward the bills therefore to the Authority which shall pay same. Manager shall take advantage of all trade allowances or discounts offered or available to it in the purchase of materials, supplies and equipment or in the payment of any other expenses.

c. Accountings and Reports

On or before the fourteenth (14th) working day of each month, commencing the month next following the date hereof, the Manager shall submit to the Authority a true and correct monthly statement which shall be in form and content satisfactory to the Authority which shall set forth in detail the amounts actually paid for expenses in the operation of the Parking Facility during the preceding month, and copies of the payroll for each employee in the Parking Facility during such month showing the hours worked each day and the gross pay for each week. At any time during the term of this Agreement, at the Authority's election, it may retain a Certified Public Accountant to audit the accounts of the Parking Facility and the work of the Manager. The

Manager will make available all books and ledgers of the operation of the Parking Facility to such auditors and cooperate fully with their audit report. All operating receipts and records shall be stored by the Manager for a period of twelve (12) months, after which they may be destroyed unless otherwise requested in writing by the Authority.

d. Books and Records

Manager shall keep and maintain, in accordance with generally accepted accounting procedures, proper and adequate books, records and accounts reflecting receipts and disbursements and otherwise in connection with all matters contemplated by this Agreement in form satisfactory to the Authority. Such books, records and accounts shall be kept at Operator's place of business in Boston, Massachusetts, and the Authority or its duly authorized representatives shall have the right to examine same at all reasonable times.

6. Labor, Supervision, Etc.

Manager shall provide all labor, administration, supervision, supplies, equipment and other items reasonably required for the proper and economic operation and security of the Parking Facility and shall advise and cooperate with the Authority in all matters pertaining to the performance of this Agreement and the orderly control of parking and traffic in or about the Premises. Manager shall have in its employ, for the operation of the Parking Facility, a sufficient number of suitable employees to enable it to properly and economically manage, operate and maintain the Parking Facility for the parking of vehicles. The number of personnel employed by the Manager shall be subject to review and approval by the Authority and all personnel shall be required to wear neat and clean clothing at all times. All other matters

pertaining to the employment of such employees, including the salaries to be paid and the benefits to be allowed (including premium pay for holidays) are the responsibility of Manager; provided, however, that such salaries and such benefits shall be generally consistent with those paid or provided other employees at other local public parking facilities.

Manager shall comply with all applicable laws and regulations pertaining to the employment of such employees and shall be responsible for the licensing of those employees, if the character of their work in the Parking Facility requires licensing. The Authority may request that any person employed in the Parking Facility be discharged when and if it shall deem such person's continued employment to be contrary to the best interests of the Parking Facility, and upon such request by the Authority, the Manager shall forthwith discharge such objectionable employee.

7. Licenses and Permits

Manager shall see that all necessary licenses, permits and approvals from any government authorities having jurisdiction over the performance of the work hereunder or the operation of the Parking Facility are obtained, it being understood, however, that to the extent required by law or at the option of the Authority, such licenses, permits and approvals shall be in the name of Manager and Manager will sign any applications or other documents necessary to obtain such licenses, permits or approvals.

8. Insurance; Indemnification

Manager shall obtain and maintain the following types of insurance at generally competitive rates:

- (a) Workmen's Compensation in the statutory limits covering all employees whose compensation is at Owner's expense hereunder.
- (b) General Liability (Parking Station Operations) with limits of One Million (\$1,000,000) Dollars/Two Million (\$2,000,000) Dollars bodily injury and One Million (\$1,000,000) Dollars property damage.
- (c) Garage Keepers Legal Liability with limits of Seven Hundred (\$700,000) Dollars covering fire, explosion and theft with Two Hundred Fifty (\$250.00) Dollars deductible; vandalism, malicious mischief, riot and civil commotion with Twenty-five (\$25.00) Dollars deductible; and collision with One Hundred (\$100.00) Dollars deductible.
- (d) Blanket Crime Policy, Two Thousand Five Hundred (\$2,500.00) Dollars - Five Hundred (\$500.00) Dollars deductible.
- (e) Employee Bonding, One Hundred Thousand (\$100,000.00) Dollars
- (f) Such other types of coverage as the Authority may, from time to time, request in writing or which Manager, with approval of the Authority may elect to carry.

The insurance required by clauses (b), (c), (d) and (e), shall be written by companies and in forms satisfactory to the Authority and as to the coverage required by clauses (b) and (c), the policies shall name "Boston Redevelopment Authority" as an additional insured and shall provide for notice in writing to the Authority at least ten (10) days prior to cancellation. Manager shall furnish to the Authority certificates of insurance or copies of the policies evidencing the coverage required hereunder, and each policy shall not be modified or cancelled unless the ten (10) days prior written notice shall have been given to the Authority. Manager will hold the Authority harmless and indemnified from and against any loss, cost, damage or liability arising out of Operator's operation of the Parking Facility, which shall not be covered, provided for or compensated by such insurance as aforesaid or other insurance as the Authority may carry in respect of the Premises. Manager further agrees to pay, indemnify, and save harmless the Authority from all suits, actions, claims, demands, damages, or losses, expenses and for costs of every kind and description relating to Operator's management of this facility. However, Manager shall not be required to indemnify the Authority for any expense or liability which is attributable to theft of personal property from automobiles, deductible from insurance or which is caused by property defects in said lot.

9. Supplies and Equipment

Manager shall purchase and keep at the Parking Facility such materials, supplies and equipment as shall be necessary for the efficient and economical performance of this Agreement, and title to all such materials, supplies and equipment shall be in the name of the Authority. Manager shall

be responsible for the proper use, maintenance and safekeeping of such materials, supplies and equipment and the Authority shall have the right, at all reasonable times, to inspect and inventory them.

10. Miscellaneous

(a) In no event shall this Agreement be considered to be a lease or to constitute the parties hereto as landlord and tenant or as partners or joint venturers. In the operation of the Parking Facility and in all matters pertaining thereto, Manager shall, at all times and for all purposes, be an independent contractor and all persons engaged in the operation of the Parking Facility shall be employees of Manager, and not the Authority.

(b) Unless otherwise provided herein, any notice, request, approval or other communication which is required or permitted to be given hereunder shall be given in writing and shall be sent by certified mail to such address as shall be designated by the parties, from time to time. The date of mailing shall be deemed to be the date such notice has been given.

(c) Manager shall not assign this Agreement without the express written approval of the Authority.

(d) Manager shall notify the Authority with reasonable promptness of any unusual conditions which may develop in the operation of the Parking Facility or to the Parking Facility such as, but not limited to, accidents, injuries, fire, flood, breakage, or casualty.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed in their respective names and by persons thereunto duly authorized.

FITZ-INN AUTO PARKS, INC.

BY William Fitzgerald

BOSTON REDEVELOPMENT AUTHORITY

BY Kane Simonian
Kane Simonian, Executive Director

APPROVED AS TO FORM:

Robert F. McNeil
Robert F. McNeil, Chief General Counsel
Boston Redevelopment Authority *RFM*

EXHIBIT "A"



Residents within area outlined by broken line and Boston Harbor are eligible for monthly rates.

NORTH END-WATERFRONT

EXHIBIT "B"

OPERATION AND PIER SCHEDULE

1. Hours of daily operation shall be from 6:00 A.M. until at least 11:00 P.M. These hours are subject to review by the Authority and may be changed by notice from the Authority in the event that circumstances require.
2. Rates to be changed shall be similar to those charged by other outdoor public parking facilities and subject to review and approval by the Authority.

11.
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TO: Boston Redevelopment Authority and
Stephen Coyle, Director

FROM: Kane Simonian, Secretary

DATE: April 9, 1987

SUBJECT: SARGENT'S WHARF PARKING PROPOSALS

At the last meeting of the Authority, the Secretary was authorized to solicit proposals for the management of the parking lot at Sargent's Wharf from qualified parking firms. Pursuant to this, proposals were received from the following firms, all of which are highly qualified to manage parking lots:

- Meyers Systems Parking
- Kinney System of Boston
- Fitz-Inn Auto Parks, Inc.
- Pilgrim Parking, Inc.

The proposals were evaluated by the Real Estate Officer, Ms. Patricia Twohig, and were reviewed with the Secretary.

Two of the proposals were considered unacceptable because they called for depositing the daily revenues in an account in the Authority's name but under the control of the management firm. They would then pay all expenses through the Authority's checking account on behalf of the Authority, and then transmit the balance to the Authority after deducting the management fee.

The preferred way of handling a matter like this is to have the funds deposited on a daily basis in an account in the Authority's name under the control of the Authority. The beginning of each month, the operator will then submit bills, vouchers and receipts and be reimbursed for the management fee and for all expenditures made in the month before, after an audit by the Boston Redevelopment Authority Accounting Department.

The other two proposals were Kinney System and Fitz-Inn Auto Parks. In the opinion of the Real Estate Officer and the Secretary, the Fitz-Inn proposal appears to be the most acceptable. The Fitz-Inn proposal includes a flat fee of \$30,000 to manage the lot. They will then pre-pay all expenditures on a monthly basis which will be reimbursed by the Authority after the BRA audit.

The Kinney System proposal includes a flat fee of \$15,000, plus 5% of the excess revenue over \$500,000 which amounts to a total of \$32,112 per year based on projected revenue contained in the Kinney proposal.

Both of these firms are eminently qualified and manage many garages and lots in the Boston area; e.g., Kinney manages the Government Center Garage; the John Hancock Garage; Commercial Street Garage; Devonshire Towers Garage; Exchange Place Garage, and many open-air lots including the MBTA.

The Fitz-Inn organization operates the Center Plaza Garages, One, Two and Three; Meridien Hotel; One Federal Street; the Worcester Garage; Centrum Garage in Worcester, as well as the Deaconess Hospital Garage, and several other hospital garages and hospital lots. It also has under contract, when they are completed, the management of Rowes Wharf; One Post Office Square; 75 Federal Street. For that matter, the other two proposals received, Pilgrim and Meyers, are equally qualified by virtue of their operations.

Accordingly, it is recommended that the proposal from Fitz-Inn Auto Parks be accepted. An appropriate vote follows:

VOTED: That the Executive Director be authorized to execute a Management Agreement with Fitz-Inn Auto Parks, Inc. for the operation of the Sargent's Wharf parking lot at a flat annual fee of \$30,000, effective April 16, 1987, in accordance with terms and conditions deemed in the best interest of the Authority by the Secretary, after consultation with Ms. Patricia Twohig, Real Estate Officer, and Mr. Joseph Noonan, Assistant Director for Management and Budget, and with the approval of the Chief General Counsel as to form.